

FIRST REGULAR SESSION

SENATE BILL NO. 192

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SHOEMYER.

Read 1st time January 14, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

0848S.011

AN ACT

To repeal section 577.023, RSMo, and to enact in lieu thereof one new section relating to intoxication-related traffic offenses, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 577.023, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 577.023, to read as follows:

[577.023. 1. For purposes of this section, unless the context
2 clearly indicates otherwise:

3 (1) An "aggravated offender" is a person who:

4 (a) Has pleaded guilty to or has been found guilty of three
5 or more intoxication-related traffic offenses; or

6 (b) Has pleaded guilty to or has been found guilty of one or
7 more intoxication-related traffic offense and, in addition, any of the
8 following: involuntary manslaughter under subdivision (2) or (3) of
9 subsection 1 of section 565.024, RSMo; murder in the second degree
10 under section 565.021, RSMo, where the underlying felony is an
11 intoxication-related traffic offense; or assault in the second degree
12 under subdivision (4) of subsection 1 of section 565.060, RSMo; or
13 assault of a law enforcement officer in the second degree under
14 subdivision (4) of subsection 1 of section 565.082, RSMo;

15 (2) A "chronic offender" is:

16 (a) A person who has pleaded guilty to or has been found
17 guilty of four or more intoxication-related traffic offenses; or

18 (b) A person who has pleaded guilty to or has been found
19 guilty of, on two or more separate occasions, any combination of the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

20 following: involuntary manslaughter under subdivision (2) or (3) of
21 subsection 1 of section 565.024, RSMo; murder in the second degree
22 under section 565.021, RSMo, where the underlying felony is an
23 intoxication-related traffic offense; assault in the second degree
24 under subdivision (4) of subsection 1 of section 565.060, RSMo; or
25 assault of a law enforcement officer in the second degree under
26 subdivision (4) of subsection 1 of section 565.082, RSMo; or

27 (c) A person who has pleaded guilty to or has been found
28 guilty of two or more intoxication-related traffic offenses and, in
29 addition, any of the following: involuntary manslaughter under
30 subdivision (2) or (3) of subsection 1 of section 565.024, RSMo;
31 murder in the second degree under section 565.021, RSMo, where
32 the underlying felony is an intoxication-related traffic offense;
33 assault in the second degree under subdivision (4) of subsection 1
34 of section 565.060, RSMo; or assault of a law enforcement officer in
35 the second degree under subdivision (4) of subsection 1 of section
36 565.082, RSMo;

37 (3) An "intoxication-related traffic offense" is driving while
38 intoxicated, driving with excessive blood alcohol content,
39 involuntary manslaughter pursuant to subdivision (2) or (3) of
40 subsection 1 of section 565.024, RSMo, murder in the second degree
41 under section 565.021, RSMo, where the underlying felony is an
42 intoxication-related traffic offense, assault in the second degree
43 pursuant to subdivision (4) of subsection 1 of section 565.060,
44 RSMo, assault of a law enforcement officer in the second degree
45 pursuant to subdivision (4) of subsection 1 of section 565.082,
46 RSMo, or driving under the influence of alcohol or drugs in
47 violation of state law or a county or municipal ordinance, where the
48 defendant was represented by or waived the right to an attorney in
49 writing;

50 (4) A "persistent offender" is one of the following:

51 (a) A person who has pleaded guilty to or has been found
52 guilty of two or more intoxication-related traffic offenses;

53 (b) A person who has pleaded guilty to or has been found
54 guilty of involuntary manslaughter pursuant to subdivision (2) or
55 (3) of subsection 1 of section 565.024, RSMo, assault in the second
56 degree pursuant to subdivision (4) of subsection 1 of section
57 565.060, RSMo, assault of a law enforcement officer in the second
58 degree pursuant to subdivision (4) of subsection 1 of section

59 565.082, RSMo; and

60 (5) A "prior offender" is a person who has pleaded guilty to
61 or has been found guilty of one intoxication-related traffic offense,
62 where such prior offense occurred within five years of the
63 occurrence of the intoxication-related traffic offense for which the
64 person is charged.

65 2. Any person who pleads guilty to or is found guilty of a
66 violation of section 577.010 or 577.012 who is alleged and proved
67 to be a prior offender shall be guilty of a class A misdemeanor.

68 3. Any person who pleads guilty to or is found guilty of a
69 violation of section 577.010 or 577.012 who is alleged and proved
70 to be a persistent offender shall be guilty of a class D felony.

71 4. Any person who pleads guilty to or is found guilty of a
72 violation of section 577.010 or section 577.012 who is alleged and
73 proved to be an aggravated offender shall be guilty of a class C
74 felony.

75 5. Any person who pleads guilty to or is found guilty of a
76 violation of section 577.010 or section 577.012 who is alleged and
77 proved to be a chronic offender shall be guilty of a class B felony.

78 6. No state, county, or municipal court shall suspend the
79 imposition of sentence as to a prior offender, persistent offender,
80 aggravated offender, or chronic offender under this section nor
81 sentence such person to pay a fine in lieu of a term of
82 imprisonment, section 557.011, RSMo, to the contrary
83 notwithstanding. No prior offender shall be eligible for parole or
84 probation until he or she has served a minimum of five days
85 imprisonment, unless as a condition of such parole or probation
86 such person performs at least thirty days of community service
87 under the supervision of the court in those jurisdictions which have
88 a recognized program for community service. No persistent
89 offender shall be eligible for parole or probation until he or she has
90 served a minimum of ten days imprisonment, unless as a condition
91 of such parole or probation such person performs at least sixty days
92 of community service under the supervision of the court. No
93 aggravated offender shall be eligible for parole or probation until
94 he or she has served a minimum of sixty days imprisonment. No
95 chronic offender shall be eligible for parole or probation until he or
96 she has served a minimum of two years imprisonment.

97 7. The state, county, or municipal court shall find the

98 defendant to be a prior offender, persistent offender, aggravated
99 offender, or chronic offender if:

100 (1) The indictment or information, original or amended, or
101 the information in lieu of an indictment pleads all essential facts
102 warranting a finding that the defendant is a prior offender or
103 persistent offender; and

104 (2) Evidence is introduced that establishes sufficient facts
105 pleaded to warrant a finding beyond a reasonable doubt the
106 defendant is a prior offender, persistent offender, aggravated
107 offender, or chronic offender; and

108 (3) The court makes findings of fact that warrant a finding
109 beyond a reasonable doubt by the court that the defendant is a
110 prior offender, persistent offender, aggravated offender, or chronic
111 offender.

112 8. In a jury trial, the facts shall be pleaded, established and
113 found prior to submission to the jury outside of its hearing.

114 9. In a trial without a jury or upon a plea of guilty, the
115 court may defer the proof in findings of such facts to a later time,
116 but prior to sentencing.

117 10. The defendant shall be accorded full rights of
118 confrontation and cross-examination, with the opportunity to
119 present evidence, at such hearings.

120 11. The defendant may waive proof of the facts alleged.

121 12. Nothing in this section shall prevent the use of
122 presentence investigations or commitments.

123 13. At the sentencing hearing both the state, county, or
124 municipality and the defendant shall be permitted to present
125 additional information bearing on the issue of sentence.

126 14. The pleas or findings of guilt shall be prior to the date
127 of commission of the present offense.

128 15. The court shall not instruct the jury as to the range of
129 punishment or allow the jury, upon a finding of guilt, to assess and
130 declare the punishment as part of its verdict in cases of prior
131 offenders, persistent offenders, aggravated offenders, or chronic
132 offenders.

133 16. Evidence of a prior conviction, plea of guilty, or finding
134 of guilt in an intoxication-related traffic offense shall be heard and
135 determined by the trial court out of the hearing of the jury prior to
136 the submission of the case to the jury, and shall include but not be

137 limited to evidence of convictions received by a search of the
138 records of the Missouri uniform law enforcement system
139 maintained by the Missouri state highway patrol. After hearing
140 the evidence, the court shall enter its findings thereon. A plea of
141 guilty or a finding of guilt followed by incarceration, a fine, a
142 suspended imposition of sentence, suspended execution of sentence,
143 probation or parole or any combination thereof in any
144 intoxication-related traffic offense in a state, county, or municipal
145 court, or any combination thereof, shall be treated as a prior plea
146 of guilty or finding of guilt for purposes of this section.]

577.023. 1. For purposes of this section, unless the context clearly
2 indicates otherwise:

3 (1) An "aggravated offender" is a person who:

4 (a) Has pleaded guilty to or has been found guilty of three or more
5 intoxication-related traffic offenses; or

6 (b) Has pleaded guilty to or has been found guilty of one or more
7 intoxication-related traffic offense and, in addition, any of the following:
8 involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section
9 565.024, RSMo; murder in the second degree under section 565.021, RSMo, where
10 the underlying felony is an intoxication-related traffic offense; or assault in the
11 second degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or
12 assault of a law enforcement officer in the second degree under subdivision (4) of
13 subsection 1 of section 565.082, RSMo;

14 (2) A "chronic offender" is:

15 (a) A person who has pleaded guilty to or has been found guilty of four or
16 more intoxication-related traffic offenses; or

17 (b) A person who has pleaded guilty to or has been found guilty of, on two
18 or more separate occasions, any combination of the following: involuntary
19 manslaughter under subdivision (2) or (3) of subsection 1 of section 565.024,
20 RSMo; murder in the second degree under section 565.021, RSMo, where the
21 underlying felony is an intoxication-related traffic offense; assault in the second
22 degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or assault
23 of a law enforcement officer in the second degree under subdivision (4) of
24 subsection 1 of section 565.082, RSMo; or

25 (c) A person who has pleaded guilty to or has been found guilty of two or
26 more intoxication-related traffic offenses and, in addition, any of the following:
27 involuntary manslaughter under subdivision (2) or (3) of subsection 1 of section
28 565.024, RSMo; murder in the second degree under section 565.021, RSMo, where
29 the underlying felony is an intoxication-related traffic offense; assault in the

30 second degree under subdivision (4) of subsection 1 of section 565.060, RSMo; or
31 assault of a law enforcement officer in the second degree under subdivision (4) of
32 subsection 1 of section 565.082, RSMo;

33 (3) An "intoxication-related traffic offense" is driving while intoxicated,
34 driving with excessive blood alcohol content, involuntary manslaughter pursuant
35 to subdivision (2) or (3) of subsection 1 of section 565.024, RSMo, murder in the
36 second degree under section 565.021, RSMo, where the underlying felony is an
37 intoxication-related traffic offense, assault in the second degree pursuant to
38 subdivision (4) of subsection 1 of section 565.060, RSMo, assault of a law
39 enforcement officer in the second degree pursuant to subdivision (4) of subsection
40 1 of section 565.082, RSMo, or driving under the influence of alcohol or drugs in
41 violation of state law or a county or municipal ordinance[, where the defendant
42 was represented by or waived the right to an attorney in writing];

43 (4) A "persistent offender" is one of the following:

44 (a) A person who has pleaded guilty to or has been found guilty of two or
45 more intoxication-related traffic offenses;

46 (b) A person who has pleaded guilty to or has been found guilty of
47 involuntary manslaughter pursuant to subdivision (2) or (3) of subsection 1 of
48 section 565.024, RSMo, assault in the second degree pursuant to subdivision (4)
49 of subsection 1 of section 565.060, RSMo, assault of a law enforcement officer in
50 the second degree pursuant to subdivision (4) of subsection 1 of section 565.082,
51 RSMo; and

52 (5) A "prior offender" is a person who has pleaded guilty to or has been
53 found guilty of one intoxication-related traffic offense, where such prior offense
54 occurred within five years of the occurrence of the intoxication-related traffic
55 offense for which the person is charged.

56 2. Any person who pleads guilty to or is found guilty of a violation of
57 section 577.010 or 577.012 who is alleged and proved to be a prior offender shall
58 be guilty of a class A misdemeanor.

59 3. Any person who pleads guilty to or is found guilty of a violation of
60 section 577.010 or 577.012 who is alleged and proved to be a persistent offender
61 shall be guilty of a class D felony.

62 4. Any person who pleads guilty to or is found guilty of a violation of
63 section 577.010 or section 577.012 who is alleged and proved to be an aggravated
64 offender shall be guilty of a class C felony.

65 5. Any person who pleads guilty to or is found guilty of a violation of
66 section 577.010 or section 577.012 who is alleged and proved to be a chronic
67 offender shall be guilty of a class B felony.

68 6. No state, county, or municipal court shall suspend the imposition of

69 sentence as to a prior offender, persistent offender, aggravated offender, or
70 chronic offender under this section nor sentence such person to pay a fine in lieu
71 of a term of imprisonment, section 557.011, RSMo, to the contrary
72 notwithstanding. No prior offender shall be eligible for parole or probation until
73 he or she has served a minimum of five days imprisonment, unless as a condition
74 of such parole or probation such person performs at least thirty days of
75 community service under the supervision of the court in those jurisdictions which
76 have a recognized program for community service. No persistent offender shall
77 be eligible for parole or probation until he or she has served a minimum of ten
78 days imprisonment, unless as a condition of such parole or probation such person
79 performs at least sixty days of community service under the supervision of the
80 court. No aggravated offender shall be eligible for parole or probation until he
81 or she has served a minimum of sixty days imprisonment. No chronic offender
82 shall be eligible for parole or probation until he or she has served a minimum of
83 two years imprisonment.

84 7. The state, county, or municipal court shall find the defendant to be a
85 prior offender, persistent offender, aggravated offender, or chronic offender if:

86 (1) The indictment or information, original or amended, or the information
87 in lieu of an indictment pleads all essential facts warranting a finding that the
88 defendant is a prior offender or persistent offender; and

89 (2) Evidence is introduced that establishes sufficient facts pleaded to
90 warrant a finding beyond a reasonable doubt the defendant is a prior offender,
91 persistent offender, aggravated offender, or chronic offender; and

92 (3) The court makes findings of fact that warrant a finding beyond a
93 reasonable doubt by the court that the defendant is a prior offender, persistent
94 offender, aggravated offender, or chronic offender.

95 8. In a jury trial, the facts shall be pleaded, established and found prior
96 to submission to the jury outside of its hearing.

97 9. In a trial without a jury or upon a plea of guilty, the court may defer
98 the proof in findings of such facts to a later time, but prior to sentencing.

99 10. The defendant shall be accorded full rights of confrontation and
100 cross-examination, with the opportunity to present evidence, at such hearings.

101 11. The defendant may waive proof of the facts alleged.

102 12. Nothing in this section shall prevent the use of presentence
103 investigations or commitments.

104 13. At the sentencing hearing both the state, county, or municipality and
105 the defendant shall be permitted to present additional information bearing on the
106 issue of sentence.

107 14. The pleas or findings of guilt shall be prior to the date of commission

108 of the present offense.

109 15. The court shall not instruct the jury as to the range of punishment or
110 allow the jury, upon a finding of guilt, to assess and declare the punishment as
111 part of its verdict in cases of prior offenders, persistent offenders, aggravated
112 offenders, or chronic offenders.

113 16. Evidence of a prior **conviction**, plea of guilty, or finding of guilt in
114 an intoxication-related traffic offense shall be heard and determined by the trial
115 court out of the hearing of the jury prior to the submission of the case to the jury,
116 and shall include but not be limited to evidence of convictions received by a
117 search of the records of the Missouri uniform law enforcement system maintained
118 by the Missouri state highway patrol. After hearing the evidence, the court shall
119 enter its findings thereon. A plea of guilty or a finding of guilt followed by
120 incarceration, **a fine**, a suspended imposition of sentence, suspended execution
121 of sentence, probation or parole or any combination thereof in any
122 intoxication-related traffic offense in a state, county or municipal court or any
123 combination thereof, shall be treated as a prior plea of guilty or finding of guilt
124 for purposes of this section.

Bill ✓

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